39 p. ✓

MONTANA LEGISLATIVE HISTORY

Chapter 407 19 79

Bill H _____ S 409 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 12	✓ C	Hearing Date(s)	Feb 16	✓ C
	Mar 14	✓ C		Feb 18	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	Mar 14	✓ C		Feb 19	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

CHAPTER NO. 407

SENATE BILL NO. 409

INTRODUCED BY REGAN, LENSINK, DUSSAULT

IN THE SENATE

February 7, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 15, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1979	Second reading, concurred in.
March 20, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 21, 1979	Returned from second house. Concurred in as amended.
March 22, 1979	Second reading, pass consideration.

March 23, 1979	Second reading, amendments adopted.
March 24, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 409

INTRODUCED BY Regan Tenant Neuman

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO ASSAULTS OCCURRING BETWEEN SPOUSES; AMENDING SECTIONS 27-19-306, 40-2-201, AND 45-5-506, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Right of person to sue spouse for assault. A person has a cause of action against his spouse for damages for personal injury caused by the spouse's intentional assault on such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

NEW SECTION. Section 2. Action for injunction to prevent disruption of home by family member. A person may file a verified complaint in the district court showing that physical or emotional harm will result from the physical presence of a family member in the family home and requesting an injunction restraining such family member from molesting or disturbing the peace of the family home or excluding him therefrom. The court shall act on the complaint as in other actions for injunctions as provided in Title 27, chapter 19, as amended, including those provisions relating to temporary restraining orders.

Section 3. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge may require, except when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a party plaintiff or the complaint was filed pursuant to [section 2], a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction if the court finally decide that the plaintiff was not entitled thereto.

(2) Within 5 days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If the plaintiff fails to do so, such plaintiff is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."

Section 4. Section 40-2-201, MCA, is amended to read:

"40-2-201. When husband's and wife's interests

SB 409
INTRODUCED BILL

separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling except as provided by statute."

Section 5. Section 45-5-506, MCA, is amended to read:

"45-5-506. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a

defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken."

-End-

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB-367	2/5/79	2/12/79	2/12/79	2/12/79					
SB-374	2/5/79	2/12/79	2/12/79			2/12/79			
SB-376	2/6/79	2/14/79	2/14/79			2/14/79			
SB-380	2/6/79	2/14/79	2/14/79	2/14/79					
SB-382	2/6/79	2/15/79	2/16/79			2/15/79			
SB-386	2/6/79	2/15/79	2/19/79			2/12/79			
SB-393	2/6/79	2/15/79	2/19/79			2/18/79			
HB-369	2/6/79	3/3/79	3/3/79				3/3/79		
HB-376	2/6/79	3/5/79	3/5/79						3/5/79
SB-394	2/7/79	2/15/79	2/16/79	2/15/79					
SB-404	2/12/79	2/16/79	2/16/79			2/16/79			
SB-409	2/12/79	2/16/79	2/19/79			2/18/79			
HB-32	2/12/79	3/2/79	3/6/79					3/3/79	
SB 420	2/8/79	2/16/79	Tabled 2/18/79						
HB 438	2/8/79	3/15/79	3/15/79					3/15/79	
HB 443	2/8/79	3/3/79	3/3/79					3/3/79	

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 16, 1979

The fortieth meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building by Senator Everett R. Lensink on the above date at 9:33 a.m.

ROLL CALL:

All members were present with the exception of Senator Healy, who was excused.

CONSIDERATION OF SENATE BILL 409:

Senator Regan, District 31, gave an explanation of this bill, which is an act to generally revise the law relating to assaults and intentional torts occurring between spouses. She stated that this bill came out of a study dealing with spouse abuse, which the Montana Board of Crime Control funded, and out of which came the book, "A Study of Spouse Battering in Montana". (See copy enclosed) She said that on page 3 of the book that it deals with Montana law and remedies. She felt that the state has an interest and a duty to protect one individual from injury to another, and she did not feel that a marriage license should be a license to batter.

Carol Mitchell, from the State Task Force on Spouse Abuse, and in private practice in Missoula, Montana, stated that the common law of Montana prevents suits between husbands and wives, and parents and children; and she felt that we should abolish that immunity.

Pam Larson, an English teacher from Eastern in Billings, and mother of two sons, age 14 and 15, stated that she and her sons were part of a battering experience. She said that she preferred charges against her husband in behalf of herself and her youngest son, that her former husband was found guilty of assault, that they had extensive medical expenses; and the man was fined $50.00 and released. She stated that she was forced to pay the medical bills for her son because she was his legal representative. She also paid medical expenses for herself.

Sharon McVicker, representing herself, stated that she was a lab technician and when she had been married for approximately one year and when she was four months pregnant, her husband held her against a wall while his 16-year old daughter from a previous marriage, kicked her in the stomach. She said that she did not suffer any more battering until after her child was born; when she was violently shoved through the front door and her right artery was severed and a peripheral nerve damaged. She stated that she incurred medical bills over a six-month period and that she had no protection and she was responsible for the bills. She further stated that after her first operation she suffered two more beatings and that it has been agonizing mentally, physically and emotionally and asked the committee to support the bill.

Carol Mitchell said that theoretically the wife should be able to go to her husband and collect, but the hospital wants their money and that the woman has to be held responsible and that there is no ability for the woman to collect for the permanent damage she has suffered. She stated that the previous testimony covered the first section of the bill, and now they would offer testimony covering the second section. She stated that the law is not very clear concerning a temporary restraining order or an injunction where a husband and wife are in a divorce action.

Jessica Hunter from Missoula, who is a professional home economist, and teacher for 15 years, said that she was admitted to the hospital at least seven times because of this. She said that after the divorce, he would sit outside her door day and night; and she stated that women are in bad need of a restraining order.

Ann Bullington, Helena, connected with the State Task Force on Spouse Abuse, stated that she was a student at Carroll College, that she had left her husband who had abused her in Georgia, moved to Montana, got a job, a good home and four months later her husband was knocking at her door. She said she called the police and what she needed most was a restraining order, but was told she could not get one as she had to wait until she had filed for a divorce.

Marti Adrian gave a statement concerning sexual assault. She said that the couple may be generally living apart without any sexual activity. She said that sexual assault is common and currently we prohibit people from prosecution because they have not yet filed for a civil action or divorce. She said that the first problem is that they have to make an important legal decision at a time of crisis in their life. She also explained that batterers are very often the controller in the home, women often leave the home with no money to get away; the law is asking them to file for divorce and put forth some money for divorce without the ability to do so.

Mark Bauer, who was the attorney who represented Sharon McVicker in her divorce action, stated that Sharon had filed for a divorce prior to the time she was thrown through the door. She was battered after she had tried to get a divorce. Technically, she was still married and there was no way to collect for her permanent injuries. Her husband was fined $50.00 and he stated that they had a restraining order and this did not protect her.

Diane Mann, a social worker and marriage counselor in Great Falls and a member of the Task Force on Spouse Abuse, stated that they put in many hours of research into the tragedies of assault a it became apparent that legislative changes would have to be made. She stated that they found assault in approximately 1/3 to 1/2 of all American homes and that society cannot turn its back on bruises, broken bones and shattered souls. She stated that children learn two things - that another person in power and with authority has

the right to hit you and hurt you, and they begin to feel that they deserve what they get - that they are a bad person. She felt that minds and bodies should not be violated by another human being.

Reverend William Burkhardt, president of the Montana Association of Churches, gave a statement in support of this bill.

Jan Brown, lobbyist for the Montana Association of Churches, offered support for this bill.

Carol Mitchell explained that from 14 to 20 percent of the married women will be hospitalized as a result of violence in their own homes and she felt that this was no minor problem.

Steve Waldron, Representative and a member of the Task Force, stated that it became apparent to him of the overwhelming need to abolish the intentional immunity, but in regard to the restraining order, he did think there was little need for that because it is just a piece of paper; and when dealing with the emotions, he did not think it would help that much.

Senator Regan stated that she thought it was imperative that we pass all three sections and she could assure the committee that it was entirely necessary.

Senator Towe questioned on section 1, why this is not being handled in the divorce decree; that if injuries have been intentionally inflicted, that certainly this is a matter that the divorce court should take up.

Senator Olson questioned if in their Task Force study, did they uncover any male spouse abuse, and it was noted that 2 to 7 percent of abuse cases are abuse to men.

Mr. Bauer stated that many women can collect on their medical, but he did not know of any courts that would award any amount of money for permanent injuries.

Senator Van Valkenburg stated that in section 3, it would seem that you would have more than a piece of paper if you had a peace bond.

There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 404:

Senator Kolstad gave an explanation of this bill, which is an act to change the filing time for a financing statement with respect to a purchase money security interest from 10 days to 15 days and to change the rules on priority over a conflicting security interest in collateral to give a purchase money security interest in collateral priority if it is perfected within 15 days rather than 10 days after the debtor receives possession of the collateral.

Date 2/14/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			✓

Each Day Attach to Minutes.

SENATE

10

Great Falls Mercy Home

P.O. Box 6183
Great Falls, Montana 59406

Mr. Everett R. Linsink
Chairman
Senate Judiciary Committee
Capitol Station
Helena, Montana 59601

Reference: SB409

Dear Mr. Linsink:

On behalf of the Board of Directors of the Great Falls Mercy Home, a shelter for battered and abused women, I would like to take this opportunity to voice our very strong support for Senate Bill 409.

We feel that SB 409, "An act generally revising the law relating to assaults between spouses" is a very important piece of legislation. Working with battered and abused women on a regular basis, we often see the need for such an act.

Once again, we would like to express our support for SB 409.

Sincerely,

Jeanne M. Adams

Jeanne M. Adams
Representing Mercy Home
Board of Directors

cc: Judiciary Committee members

1978

MISSOULA TWCA BATTERED WOMEN'S SHELTER

Jan 1 to Dec 31

WOMEN AIDED	129
Children	169
Total	298

Averages: 28 Women & Children a month

3.5 days is length of stay

Residence

Missoula City & County	77%
Out of County	15%
Out of State	12%

MARITAL STATUS

Married	68%
Divorced	08%
Separated	10%
Single	14%

RACE

White	89%
Native American	10%
Other	006%

WOMEN AGES

-- To 18	008%
18 - 25	38%
26 - 40	46%
41 - 65	15%
66 - up	0

Results of Aid

Returned to situation	28%
New Living arrangements	50%
Unknown	22%

Gt. Falls Mercy Home

STATISTICS

		TOTAL
1.	Unduplicated Count of Program Beneficiaries	344
	1a. Total Continuing from Previous Fiscal Year	1
	1b. Total New for the Year	29
	1c. Total Terminated During the Year	374

2.	REFERRED FROM	MONTH	TD
	Church	0	14
	Crises Line	14	113
	MAFB Chaplain	0	9
	MAFB (hosp. Police, etc.)	0	1
	Opportunities Inc.	2	15
	Police	1	42
	Juvenile Probation	0	3
	Providence Alchohol Center	1	4
	Rape Action	0	1
	Red Cross	0	4
	S.R.S.	0	28
	St. Thomas Childrens Home	1	5
	St. Vincent DePaul Society	0	4
	YWCA	1	5
	Mental Health	0	4
	Rescue Mission	0	1
	Private Psych.	0	4
	Women"s Resource Center	0	7
	Self-Referral	0	10
	Out of town (shelter exchange, etc.)	0	16
	Wesley Center	0	2
	Blessed Hope	0	9
	Hospital	0	5
	Sheriff	1	15
	Receiving Home	0	1
	Highway Patrol	0	1
	Private lawyer	0	1
	Runaway House	0	1
	Schools	0	1
	Indian Education (board member)	0	2

3.	AGE GROUP	TOTAL
	3a. Infants - Under 5	3
	3b. Between 5 and 12	6
	3c. Between 13 and 17	1
	3d. Between 18 and 29	4
	3e. Between 30 and 64	4
	3f. 65 and over	0

		TOTAL
4.	SEX	
	4a. Male	5
	4b. Female	13
5.	ETHNIC BACKGROUND	
	5a. White	14
	5b. Black	0
	5c. Hispanic	0
	5d. Oriental	0
	5e. Native American	4
	5f. Other Ethnic minority	0
	5g. Not Known	0
6.	INCOME	
	6a. Below Official Poverty Level	6
	6b. At a Near Poverty Level	1
	6c. Middle Income Locality Median	2
	6d. Upper Income	
	6e. Not Known	
7.	LOCATION OF RESIDENCE	
	7a. Cascade County	6
	7b. Other	3
8.	USE	
	8a. Number of persons served	30
	8b. Number of persons at the Shelter	18
	8c. Number of women at the Shelter	9
	8e. Number of boys at the Shelter	5
	8f. Number of girls at the Shelter	4
	8g. Total Days used in Shelter	21
	8h. Total beds occupied	37
	8i. Range of stay per days of use	1.76
	8j. Range of stay per month	1.79

9.	NUMBER OF WOMEN SEEKING AIDE	TOTAL
	9a. Battered or Abused	5
	9b. Transcient	3
	9c. Transcient and Abused	1

10.	AID PROVIDED	
	10a. Shelter	
	10b. Meals	207
	10c. Transportation	

Referred to and helped by:

S.R.S.	Mental Health
Private Lawer	Other Shelter
Legal Aid	Fish
Opportunities Inc.	Hospital
Crises Center	
Womens Group	

11.	RESULTS OF AID PROVIDED	TOTAL	TD
	11a. Legal action for abuse	3	29
	11b. Has/will seek professional counseling for abusive situation.	0	21
	11c. Returned to husband or boyfriend	5	40
	11d. Found alternative to abusive situation	1	48
	11e. Continued travel ng	1	35
	11f. Found home	2	27
	11g. Found home and job	1	13
	11h. Hospitalization	0	0
	11i. Did not report back	1	18
	11j. Returned home to family	2	6

12.	VOLUNTEER HOURS (to date) 24,013	HOURS
	12a. Houseparent	384
	12b. Relief Houseparents	94
	12c. Volunteers	275

GF Trib 1-16-79

Spouse abuse issues for Legislature

The fact that Oregon, along with a handful of other states, has done away with marriage as a defense for rape was the most important information to come out of the celebrated trial between Greta and John Rideout in Salem, Ore. The trial focused attention on the issue of violence in marriages. It's an issue Montana legislators will be asked to deal with this session.

The 1977 Legislature requested a study of the problems and needs of battered spouses and their families. That study has been completed, and a statewide Spouse Abuse Task Force formed last April has reviewed it. The task force has several proposals for the Legislature.

Because of the Oregon trial, the most public attention probably will go to the proposal to change Montana's rape law. The proposed change wouldn't make Montana law identical to the Oregon law; but it would amend state law so the charge of sexual assault and sexual intercourse without consent could include married people who have separated and are living apart. Married couples living together would not be affected.

But other proposals in the package dealing with battered spouses deserve more attention. Those that come to mind are proposals to acquire statistics on battering and to change procedures dealing with temporary restraining orders.

An essential initial step for handling battered spouse problems is to learn how extensive the phenomenon is. That sounds elementary, but it's not easy to do now. No one knows — not law enforcement, social services or mental health agencies -- how much spouse abuse there is in Montana. Those records that are kept on abuse are inadequate. Legislation is needed to assure the state will have some statistics to work with in the future.

A proposal concerning temporary restraining orders also deserves close consideration. Currently, a battering victim can get a temporary restraining order to keep the spouse from the home; but there is a catch. A restraining order is available to a victim only upon the filing of another action, a criminal complaint or a petition for separation or dissolution of marriage.

The spouse abuse task force recommends legislation that would allow a victim to get a temporary restraining order independent of an action for divorce or separation. That makes sense. The emphasis thus would be placed on protection of the battering victim rather than on the break-up of a marriage.

Two other proposals the Legislature will be asked to consider are: permitting suits for damages resulting from physical and mental injury from battery by a spouse, and providing communities with counseling, shelter and education services for battered spouses. The services would be locally controlled and no state funding would be involved.

The Oregon couple's rape trial and their subsequent reconciliation make interesting reading. But attention in Montana now needs to turn to less dramatic stuff.

[illegible] Battered Spouses

Editor's Note: These stories begin a series dealing with battered women. The subjects volunteered to talk [illegible] their experiences. Names have been withheld to insure the privacy of the subjects.

A fist moved slowly toward her face. There was a flash of light exploded before her eyes. Another fist came and another and another. . . A pain of light followed each.

Splintered wood and shrieked objects sprang from somewhere and seemed to float about her head.

There was motion but there was scarred none. Someone screamed in the distance. Blows landed but none were felt.

The 20-minute beating moved as if it were a brutal ballet done at half-speed.

"It really happened fast but a fight seems to go in slow-motion," said Mrs. X. "I thought I was in a dream."

"When I realized what was happening, I threw my arms over my face . . . I thought I heard [illegible] crashing but they were [illegible] I just stood there. I honestly [illegible] do a thing."

Unlike many battered wives, Mrs. X didn't fight back.

She'd wanted out of her troubled three-month marriage and asked her husband to leave. He blackened her eyes, severely cut and bruised her ear, smashed a coffee table to bits and crushed a vase in his pounding [illegible] Before the storm of fists [illegible] her, bleeding profusely into [illegible] and forced her to agree [illegible] consent to his taking custody of [illegible] school-age boy.

After he left, she and her [illegible] young children spent a precious [illegible] that night cradling and [illegible] one another through November [illegible] sleeplessness.

Cement walls and [illegible] could not be the only [illegible] of the battering, for [illegible] [illegible] [illegible] [illegible] and religious strata.

degradation, and memories of the "hateful look" of her husband, the fear in the eyes of her children and the catty chatter of nurses outside her hospital room:

"She'll go back to him. They always do. I wonder what she did to deserve it," the nurses observed.

After three days in the hospital what particularly distressed her was the comment of her doctor: "You should go back to your husband. He didn't hurt you that bad. He could have beaten you much worse if he'd wanted to."

But she didn't wait around for the second beating. She brought assault charges against her husband and divorced him.

She learned there's a "social stigma" attached to being a battered spouse, even if one only briefly. "People think it's your fault, you deserved it," she said. "They categorize you as brainless and trashy and out for food stamps, welfare — all you can get for nothing."

Hers is a local horror story — and typical. But there are others. Mrs. W was pushed down half a flight of stairs and also thrown over the balcony of a two-story apartment, Mrs. Y was thrown through a glass door. Both were repeatedly struck in the stomach while pregnant.

Some quick thinking by Mrs. Z saved herself from a shotgun death. She and her husband were quarreling. He located the weapon and started loading it.

"I wasn't afraid of dying," she said. "All I could do was picture my children coming in and seeing their mother's body splattered all over the room."

So she screamed to her husband, "If you're going to kill me, why don't you do it with your bare hands." He beat her into unconsciousness.

This kind of violence has been steadily coming out of the closet nationwide the past two years. It pervades all age, social, economic, racial and religious strata.

National statistics indicate one out of four women, whether legally married or not, are physically abused by their mates, according to Djuna Mann, a Court of Conciliation counselor. The estimate rises to a third counting women verbally intimidated or threatened by pulled punches and clenched fists, she said.

The battered women interviewed had high school educations, were from middle-income homes and ranged in age from 28 to 38. Their courtships were as short as one month to as long as a year. None was involved in a teen-age marriage. All expected of marriage what most people do.

They thought they knew the men they married and commonly described their mates as "kind, considerate and charming."

But after the wedding things changed.

As Mrs. X said, "He was totally selfless, a big buddy to my children. Then right after the marriage, it was like Jekyll and Hyde. The kids and I couldn't do anything right."

What causes the change?

For years common belief held that men were driven to such behavior by nagging women and they had a God-given right to discipline their spouses. Besides, it was thought women enjoyed the beatings — that's why they seldom left their husbands or pressed criminal charges against them. These reasonings are all myths, said Mann, yet difficult to eradicate.

The battered women staunchly maintain, "We're not masochists. That's ridiculous. Nobody likes to be hurt."

Child abuse seems at root of spouse abuse. Almost always one of the marriage partners has been abused, physically, mentally or both while growing up. Of the four women interviewed, two were abused as children; the others suspect their husbands were.

Mental cruelty had particular impact in the lives of the two women abused in childhood. As a teenager one was tormented with parental gibes, "You're fat, ugly, stupid, good-for absolutely nothing but sleeping around." The other heard, "You're neurotic," as a standby reply to her insecurities about maturing.

Consequently, the women felt inferior and were married — more than once — to men who abused them and nourished that sense. They mistakenly believed themselves deserving abuse and at fault, which are common reactions among battered women, according to Mann.

An emotional and psychological dependency on the abusive environment typically evolves, the counselor explained. It becomes an ingrained part of life, she said, but why? That's a puzzle being unraveled by battered women and professionals like Mann.

The women interviewed blamed, in part, sex stereotypes. "Like most women, I was taught to be dependent," said one. "I thought I couldn't take care of myself, after all I was just a woman. I needed a man and I panicked if I didn't have one."

Another said, "Men feel like you're their property. You have no life outside the home. The world is to revolve around them."

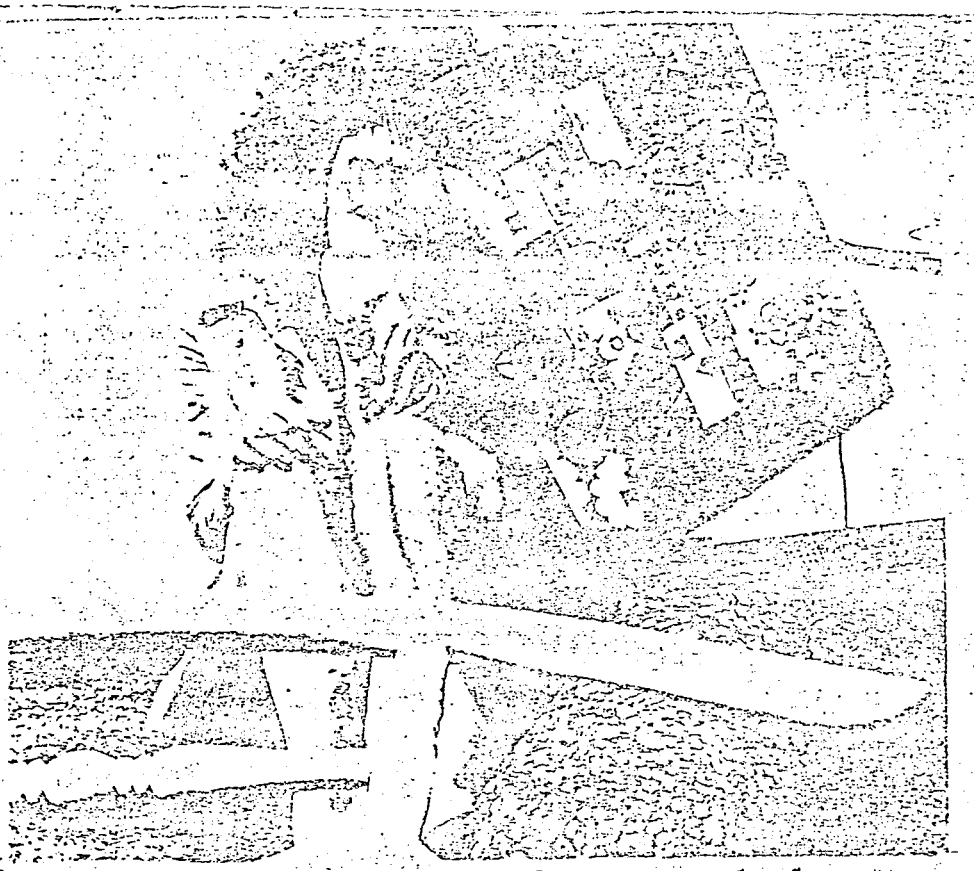
Three of the women have escaped their abusive situations. Two of them claim they will never remarry. The other is uncertain.

The fourth is still freeing herself. She is recovering from recent injuries, divorcing, going through therapy, fighting for custody of her children and simply supporting them. Stress has driven her to dreams of revenge.

Slowly, weighing her words, she confessed, "I've started fantasizing about different ways I could get even — hurt my husband as he has hurt me. I feel if he ever came to my home without contacting me in advance I could take a gun and shoot him as he walked through the door."

Next: The battering cycle.

BEST COPY AVAILABLE



Batterer, also victim of parental abuse, found admission of problem shattering

The word "batterer" sticks in his craw — because he is one.

Feelings of guilt and shame shoot through him at its mention. He associates the label with lowlifes like child molesters and with all he disrespects in the human character.

Admitting to being a wife-beater was as shattering to him as the confession of addiction is to an alcoholic.

He never pictured himself in the role. He's in his mid-thirties, educated, upper middle class, a business ace and a "liberated man," supporting equal rights and doing his share of domestic duties.

He was not caught up in the macho image of domination and aggression. And when he realized his problem, he sought therapy. These qualities make him atypical of the average batterer, professional counselors say.

What makes him typical is his background. He suffered severe whippings as a child and watched his mother beaten by his authoritarian father. He was his mother's soft shoulder and abhorred his father's use of violence to control the home. Even so, his father's nature crept out in him.

His second wife's strong, independent personality threw him for a loop. When they disagreed she stood up for herself whereas his first wife, whom he dominated, was never abused, withdrew and dissolved into tears.

The second wife had a temper and could unleash a verbal tirade sometimes filled with "I hate yous."

He couldn't cope with an outburst. He'd grab her and shake her, pull her hair, bloody her nose. He'd become petty, resorting to childish revenge like dumping cold water on her when she was bathing.

He felt "proud" after roughing her up, not because he'd *effectively* exerted authority, but because he'd demonstrated restraint. He never seriously injured her.

In a sad, hesitant voice, he explained, "I'd really been abused as a kid. One time I was beaten until blood ran down my leg. After I'd beat her up, *I'd say to myself*, I didn't abuse her. She doesn't know what real abuse is like.

"I'd compliment myself because I'd dealt out less punishment under similar circumstances than my father would have. I was treating her like a child. And spanking a child is an accepted behavior modification.

"I was trying to control her and not just with violence but with the threat of it."

Her threats of police, restraining orders, divorce "didn't make any difference" to him.

"I'd just get so darn mad I didn't care what was going on," he admitted readily. "I guess with someone you love you don't put up any protective barriers.

"I was being verbally attacked and it hurt. But just because someone is tonguing at you doesn't give you the right to smack them. I've got a tongue to use, too. It (the abuse) was not my wife's fault. It was mine."

He lost power over his own behavior and this seemed to bother him greatly.

"I don't want to be the way I was; I want to be in charge of myself," he said as though issuing himself a command.

Through professional counseling, he's learning to "fight back verbally," to leave an argument for a few hours and cool off, and to take less personally his wife's attacks, now realizing they may stem from frustrations outside their relationship.

His self-image has been damaged but not destroyed. He regards himself as "basically kind, gentle and loving," effective at work and in most other areas of his life.

He sees both himself and his wife as victims, she of spouse abuse and he of child abuse and society's traditional definition of masculinity.

"Men have to realize their wives aren't the enemy," he said, growing a bit philosophical. "They have to stop seeing themselves as super jock macho men playing at life like a football game. It's okay to clip an opponent but you don't spike a member of your own team and that's what a wife is.

"A husband and wife are like two plow horses. They have to pull together to get anywhere."

He's not sure how long his own "team" will be pulling together.

"I've driven her away from me in some ways," he explained quietly. "There's less affection, less 'I love you' said between us. The realization that we might have to call it quits hangs over us.

"Our sex life has been affected. A little roughhousing between a couple can be good. It can turn into kisses, tenderness, gentle lovemaking. But not for us anymore. My wife is afraid."

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Police intervention no solution to abuse

The radio squawks out "family disturbance" and gives an address. With that, police are enroute to a front of the most unpredictable nature — the domestic squabble.

Officer Dan Ingersoll makes the ride once or twice a month, so do others on the 8 a.m.-4 p.m. shift. Many, but not all, of the incidents involve spouse abuse.

A five-year man with the Great Falls Police Department, Ingersoll has been all over town on abuse cases, "from the Country Club district to the lower southside." The circumstances of each incident are never the same, he says, but he described a typical situation:

"The man is usually drunk. Sometimes the woman is too. Both are acting irrational. There are broken lamps, broken furniture. The woman may be crying.

"A lot of times the man would just as soon fight us. He tells us we have no right to be in his house. We're interfering in his life. But our right to be there is that someone called us."

Most times a neighbor or the woman calls in. But sometimes the callers are the couple's children and "that's the sad part," said Ingersoll, visibly touched by children that have to watch their parents "make fools of themselves."

Children are usually glad when police arrive. Ingersoll hears cries like, "Please don't let Daddy hurt Mommy" or "Mommy's drunk again and Daddy's mad."

"Kids seem to know where the problem is, who's at fault," he sighed.

He steers children away from the fight scene, comforting them as best he can. But like all officers he doesn't have much time for them because the adults require attention.

Unless there's a manpower shortage, two officers respond to a family disturbance. They separate the couple and hear out their complaints.

"We try to be friendly and help them rationalize their problems," Ingersoll said. "After a few minutes most of them cool down."

If one or both remains hostile, the officers suggest they separate for the night. If women have nowhere to go, they

Dan Ingersoll

and their children may be taken the Great Falls Mercy Home for Women and Children — an emergency housing facility created in spring 1977 and a godsend to police.

But some women — and occasionally a man — get a ride to the hospital.

Rarely do police make an arrest, although spouse abuse constitutes assault, Ingersoll's superior Lt. Tim Skinner explained why.

"If we arrest a husband that will probably intensify the couple's problems," he said. "The man might only be in jail overnight. He's got a job to go to in the morning and if he doesn't show up that may jeopardize the family income. Jail doesn't end the problem or the marriage. It can become just another wedge between the couple."

Besides, most husbands leave before the police come, Ingersoll said. In that event police explain to the wife how to make a complaint.

The woman must give her account in a sworn statement. Then the responding officers' reports are compared to hers in order to decide if a crime has been committed and probable cause exists for filing a complaint.

Most assaults are misdemeanors and complaints are filed in city court if police investigated the case. Serious assaults where life or permanent injury was threatened are felonies and complaints are filed with the county attorney.

"We advise women to wait two or three days before signing a complaint," Ingersoll said. "It gives them time to think it over. They often make up with the guy and back out."

Financial dependency often figures into that decision, Skinner noted.

Police can sign a complaint against the husband if he's still around when they arrive and if it's apparent a battering has occurred. Red marks on a woman's throat or a man's bruised knuckles are some of the telltale signs, Ingersoll said, adding that at times the man confesses.

If a second beating occurs the same night, an arrest is usually made, he said.

Police have some regular clients whose problems and responses to them seem never-changing. And a number of husband-wife disputes are purely "screaming matches," between couples 20-25, Skinner said. If older couples are fighting, alcohol is usually a factor, he commented.

There were 49 family disturbances and 40 reported assaults in September, probably only one-twentieth of those that took place, the lieutenant said. He estimated more than half of the incidents involved spouse abuse.

Family disturbances are a risky, sometimes deadly business for police. They face assault, even by the woman, who may suddenly side with her husband. More officers are killed handling domestic cases than any other.

Domestic violence is costly in time and money. Skinner said an officer spends an average of 83 minutes, including paperwork, on a domestic case. And, he said, the city spends from $2b-35b per incident. (This includes the officers' salaries, equipment, gasoline, car maintenance and overall station expenses.)

And police have no solutions. "We're a crisis intervention force," Skinner said. "We resolve the problem only temporarily."

Counseling services are the answer, the policemen said. They suggested such measures as court-mandated counseling for offenders and a creation of teams of professional counselors who could take over when police leave the scene.

Cover feature stories

by SALLY SAUNDERS

Men occasional abuse victims also, police say

Men are battering victims in only about 1 percent of the reported spouse abuse cases, according to local police.

Occasionally, a small man may be knocked around by a large, domineering woman. But more commonly some trouble in the relationship, perhaps abuse by the man, causes the woman to retaliate. And her response usually disables the man.

"The woman will wait her chance and maybe hit the guy over the head with something and knock him out," said Lt. Tim Skinner. "When they go, they go all the way."

Patrolman Dan Ingersoll related an incident that seems right out of a cartoon.

A husband came home drunk late one night and he and his wife quarreled over [illegible]. She shoved him outside and locked the door behind him. He was tired and wanted to go to bed so he decided to crawl in a bedroom window.

But she was waiting for him, rolling pin in hand. As he stuck his head inside, down came the rolling pin, splitting his head open. He spent the night in the hospital.

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GFT 1/8/79

Abuse cycle can trap spouses

SALLY SAUNDERS
Staff Writer

Spouse abuse is a vicious cycle, repeating itself time and again, sometimes trapping couples into years of misery and violence.

The cycle is touched off by the build up of stress — situations, small or large, according to Diana Mann, a Court of Conciliation counselor. A social worker, Mann conducts group and individual therapy sessions for battered wives and has just started a group for batterers.

Second in a series

She explains the cycle:

Tension between the couple escalates for days, weeks, months before something, perhaps as inconsequential as a roast too well done, reaches the boiling point near.

Verbal abuse begins. The woman finds a clenched fist thrust in her face or gets shoved up against a wall.

The tension mounts, blamed on such outside forces as a demanding boss or meddling relative. Then comes the beating, triggered by whatever — a late dinner or a request to end the marriage.

Unless the woman is hospitalized, the man rarely considers his actions to be wife beating — an assault. But later he's sorry and his pleas for forgiveness move the couple into the "apology" stage of the battering cycle.

At this time the man is calm and loving and swears he will never hurt his wife again, Mann said.

The husband may shower his wife with gifts. As one local battered wife recalled, "After the beating, there were lots of presents, lots of money, lots of 'anything you want, honey.'"

Mann calls this apology stage "the hooker." She explains: "The woman says to herself, this is the man I married, kind and loving. The husband sincerely believes his own apology. They both do. They're hooked into continuing the relationship. And within a few weeks, maybe a few months, the whole thing happens all over again."

The rerun is equally as bad or worse. In the battering cycle only the time intervals between beatings and harmony seem to vary much between couples.

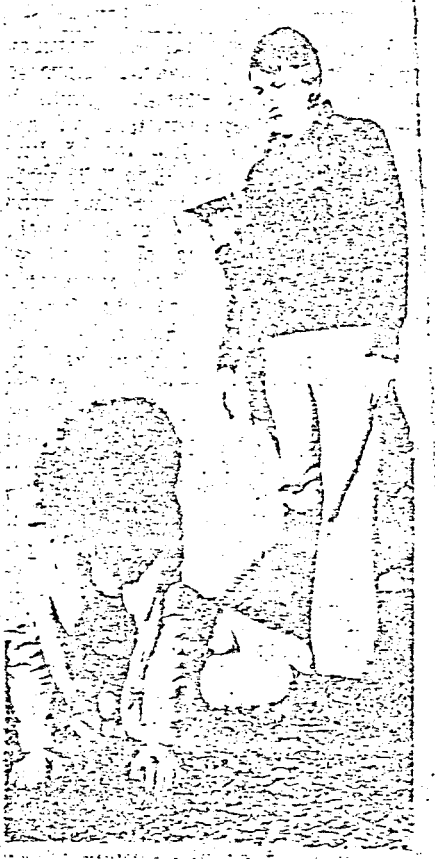
Law enforcement agencies find the "hooker" phase exasperating. This is the time women drop assault charges against their mates after law officers and prosecutors have worked to prepare a case.

As the cycle plays on, the man thinks he has power to control the situation. But so does his wife.

"They place responsibility for their behavior on some outside person or event," Mann said. "They don't examine their relationship nor control their own behavior."

Batterers generally are caught up with the macho image of aggression and authority, Mann said. They have a genuine gentle, loving side but it's shown on their terms, as though a reward for their spouse's good behavior, she explained. They rationalize their behavior by blaming the wife, and the more the beatings, the more she accepts the rationale, Mann said.

The men also suffer from low self-esteem, the counselor and three battered wives maintained. The battered women said their husbands went from job to job, some of them high paying, but were never satisfied with the



work, their performance or themselves. One woman said her husband appeared jealous of her ability to manage a household and hold down a part-time job.

But what are the solutions?

The key is education about the battering cycle and the prevalence of abuse, Mann believes. "People have to know if they fit the cycle in order to be helped," she said. "They have to want to regain control of their lives and be able to identify their feelings and what's causing them."

They need someone to listen to them, usually a professional therapist or minister but even an empathetic friend is beneficial, she said. And the couple should try calmly discussing the problems.

Mann's best tool is group counseling. At first her sessions are get-acquainted chitchat. Then as trust builds, people open up, share experiences. "This makes them feel less alone and helps improve their self-esteem," she said. "They feel somebody cares."

But people can be led only so far. They must accept final responsibility for changing their behavior, Mann said. If they don't, the old pattern is quick to return and is oftentimes played out with new mates.

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GFT - Jan. 9. 1979

Center serves as a place to go for wives who've been beaten

By SALLY SAUNDERS
Tribune Staff Writer

Where to go? That's the thought always churning in the minds of battered women deliberating escape from their situations.

Going home isn't as easy as it perhaps once was. The mobility of the population has spread families farther apart — in miles and sometimes in attachment. And the welcome mat may just not be out.

Besides, leaving is difficult. There are emotional ties with the abusive mate. After all, emotion helped bring the man and woman together.

Third in a series

But the greater consideration is financial security, particularly if children are involved. How will I support my family? That's a monumental question the battered woman must resolve. And it usually binds her to more abuse.

A local battered woman endured six months of mental torment after she'd privately made a decision to leave her husband. She had to wait for her injuries to heal before finding work. Even with her job she needed food stamps to help support her children. She'd never been on welfare before and the experience was humbling.

Another battered wife who was divorced is just eking out a living for her family despite a fairly well paying job. Her husband left her with several debts, including court costs for the divorce and medical expenses that he'd been ordered to pay.

She's eligible for welfare but refused it. "I wasn't raised that way," she said. "I'm a product of the work ethic."

Tales like this are told over and over at Great Falls Mercy Home For Women and Children — an emergency housing facility for battered and transient women without funds.

At the end of September the shelter had cared for 157 women (only a few were transients) and 153 children since its opening in spring 1977. By that time 106 families, most of them local, had been served.

One battered wife claimed, "I'd be dead if it weren't for that place."

"We never tell women how to solve their problems," said Caryl Borchers, president of Mercy Home board of directors. "We help them get counseling, find jobs, provide some transportation and a safe place to stay."

The shelter buys time for troubled women whatever their age or marital status. The length of stay is usually a few days, but some have stayed three or four weeks.

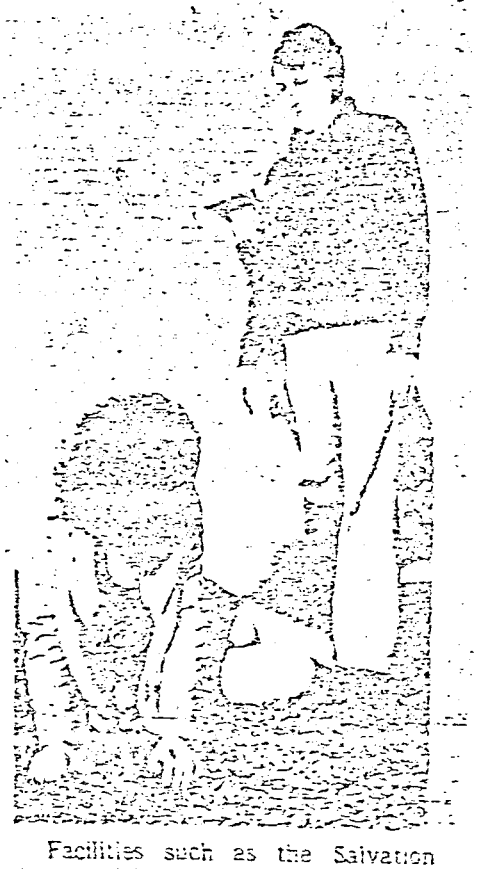
Those who need help can reach the shelter by calling the Crisis and Information Center, which is listed in the telephone directory. Mercy Home has an unpublished number to insure its clients' privacy and safety, Borchers said.

The shelter was the first of its kind in the state. Missoula has since established one and Billings, Butte, Miles City and Glasgow have plans for shelters or "safe homes," private residences where abused women can stay, Borchers said. Butte, she noted, has had safe homes for fives years.

Mercy Home is one of 50 shelters across the nation, Borchers said, adding that a number of requests come in from other communities asking how it operates and how it got started.

The shelter came about as the result of community effort. The project was launched with a $5,000 grant from the St. Vincent dePaul Society and support from 22 community service agencies. Some of the initial funding also came from city churches, Borchers said, and although Mercy Home has become a United Way agency, church donations are still a source of revenue.

A housemother and relief staff are salaried but volunteers have been Mercy Home's staple. As of the end of September, volunteers had logged 21,000 hours.



Facilities such as the Salvation Army and Rescue Mission could take care of men down on their luck, Borchers said, but there was no place for transient or abused women, particularly those with children.

The shelter has filled that gap in community services.

Some battered women say

Legal system unsympathetic

By SALLY SAYLORS
Tribune Staff Writer

To battered women the legal system seems only salt on already painful wounds.

Women complain bitterly about difficulty and delays in securing restraining orders and pressing assault charges, not to mention the occasional indifference of police and sheriff's deputies.

But a number of women perceive their worst enemy to be the county attorney's office and are downright hostile when describing their dealings there.

Fourth in a series

County Attorney J. Fred Bourdeau seemed amazed when these feelings were reported to him. "I just can't believe that," he said.

One woman referred to Bourdeau as "Freedom Fred," a tag she heard him called around the courthouse by those disenchanted with his effectiveness as a prosecutor.

Bourdeau countered the label by saying, "I've never been accused of being that liberal. There's 150 men in Deer Lodge who wouldn't agree with her."

But his office is no laughing matter to the women.

"I took a cab straight from the hospital to the county attorney's to press charges, walked in with my arm in a sling and they wouldn't even let me in the door," said one woman, bursting with anger.

Another woman, almost as angry, said she went to the county office three days after a beating for which her husband was arrested. She went to get her restraining order reinforced and to press bigamy charges.

"I talked with a deputy attorney and at first he was righteously indignant," she recalled. "He told me he'd get me a divorce and make my husband pay for my medical expenses. Then he sent me out to get a copy of my marriage certificate. When I came back 20 minutes later, it was like Jekyll and Hyde.

"The deputy said he'd talked to someone higher up and was told not to press bigamy charges because the paper would make a circus out of it.

"His final words to me were, 'The next time you see your husband tell him to come in and see me.' Well that's like walking up to a wolf and saying, 'Don't bite anyone.'"

With aid of private attorneys, the women got restraining orders issued by district judges.

One of the women waited three weeks before the order was served on her husband and ended up having to locate him herself. She is now divorced but the other woman's decree is still pending.

A third battered woman blames three of her beatings on the county attorney's office for delaying restraining orders and on the courts for failing to back up the orders once they were in effect.

Her husband was eventually brought up on assault charges, pleaded not guilty and was released on his own recognizance. She's angered by the small penalty, particularly because her ex-husband remarried soon after the divorce and subsequently seriously beat a second wife.

Bourdeau found the situations described by the women "hard to believe," but said he was "personally aggrieved" if men had committed.

"No one is denied access to this office," he said.

The county attorney was handicapped in addressing the complaints because the women's cases could not be revealed in order to protect their privacy. And in part, the women wished to be anonymous because they feared reprisal from Bourdeau's office should they have further involvement with it.

Abuse cases are treated like other assault cases, said the county attorney, who has total discretion as to which cases are prosecuted. His office handles felony and misdemeanor assaults under jurisdiction of the sheriff's department. (Misdemeanor assaults under police authority are handled in city court.)

Before a complaint is filed an investigation is made to determine if a crime was committed and if so, its severity, he said. Usually lawmen have completed the investigation before the case reaches his office.

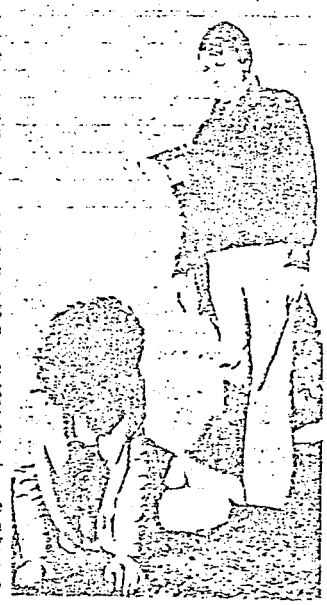
The bulk of an assault case rests on law enforcement findings, Bourdeau said, although social service agencies and medical reports are sometimes sources of information. Also considered is the complaining spouse's account of the incident given in a sworn statement.

"And there's always the other side of the story," Bourdeau said in noting his staff tries to talk with the accused man before a complaint is filed. Some women come in "angry and upset," he said, and may just be looking for revenge.

Usually the county attorney's office waits 24 to 48 hours before filing a complaint. "This allows a cooling off period," the county attorney explained, "It gives the woman time to evaluate her situation."

And women frequently "back down. That's the biggest problem we have with prosecutions," Bourdeau pointed out. Four or five women have dropped charges within the past few months, he noted.

Bourdeau said that in many instances he's readily agreeable to a woman's change of mind — provided the assault was not serious. In those cases, dropping charges may mean preservation of a marriage or a family, which should be encouraged, he maintained.



Battered woman says she battles lawyers too

Her voice sounded weary, tired of struggle. Emotion barely allowed her latest news to come out: "My lawyer is threatening to sue me."

She's been fighting six months to divorce her abusive husband. Indifferent attorneys, unexplained delays and broken restraining orders have been common course.

Although she has children, her attorney didn't ask for temporary child support. Her injuries limit the work she can do and forced her into a low-paying job. Food stamps must supplement her income.

She's endured mental harassement from her husband. He's appeared unannounced at her home and in her hospital room, violating restraining orders. She still fears for her safety.

All this has put her mental health in such a precarious state she's had to be hospitalized periodically to relax.

Her case began after a beating last spring. Because of the inaction of the county attorney's office, she had to hire a private attorney to get a restraining order against her husband.

She wanted a divorce but her husband's last-minute pleas caused her to balk. Then came two more serious beatings. They convinced her to go forward.

But her attorney was out of town so another was hired. An immediate restraining order was issued and divorce proceedings were begun. Aside from the restraining order violations being officially noted for her file, "nothing much else happened."

She claimed money is the reason. "I don't have enough," she moaned. She paid her attorney a few hundred dollars; the court ordered her husband to pay about the same amount. But she didn't have enough for the several hundred dollars remaining on her tab.

Legal aid couldn't help. "It's federally funded and can't accept any payment," she explained. "And with me, the court could order my husband to pay divorce costs."

An installment plan acceptable to her attorney and affordable for her couldn't be worked out. He threatened suit; she started looking for another attorney.

"Too busy, sorry" became a familiar refrain and not always a legitimate one, she believes. "Lawyers think first of their retainer," she claimed, adding that one even asked what kind of car she drove.

After a half dozen or so turndowns, she finally got a lawyer. But she still believes she got the runaround and feels she's not been the only one.

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State rape law change designed to aid spouses

EDITOR'S NOTE: They formerly were called battered wives. Modern jargon has changed that to battered spouses. But regardless of how it is phrased, wife-beating is such a problem in Montana and Great Falls. A series on this topic will begin Sunday in the Tribune Family Living Section.

By SALLY SAUNDERS
Tribune Staff Writer

A change in Montana's rape law — one different from Oregon's well-publicized statute — will be thrown in the hopper during the current legislative session.

Under the Montana Criminal Code, the criminal definition of "sexual assault" and "sexual intercourse without consent" excludes spouses.

Sponsored by the Montana Task Force on Spouse Abuse, the legislation would affect spouses who have separated because of marital problems and are living apart, according to Caryl Borchers, Great Falls, task force coordinator.

However, the proposed law would not affect married people living together.

A few weeks ago an Oregon man was acquitted on a charge of raping his wife. His case is believed to be the first of its kind and tested a recent Oregon law doing away with marriage as defense against rape.

The rape proposal is one of five pieces of legislation backed by the task force expected to be introduced this session.

The task force, which spent the past year researching spouse abuse statewide, is particularly pushing legislation providing for gathering statistical information about spouse abuse and creation or expansion of community services for battered women and their children.

The extent of spouse abuse is unknown because inadequate records or none at all were kept by agencies involved with the problem, explained Borchers. A proposed bill would require such agencies to keep records.

High hopes are held for a bill to provide communities with such services as counseling, shelters and advocacy and education programs, Borchers said. The services would be locally controlled and provided only if funding could be obtained without additional state appropriations.

Another bill concerns restraining orders, which battered women have had difficulty securing. Currently temporary restraining orders are available to victims of domestic assault only upon the filing of another action, a criminal complaint or a petition for separation or dissolution of marriage.

The task force is asking that temporary restraining orders be issued independent of an action for dissolution of marriage or legal separation. Its proposal would allow court orders restraining a "spouse" or "cohabitor" from entering the home or from disturbing the peace or harassing a mate or the mate's children when the petitioner can show by affidavit the probability of harm or injury.

Currently one spouse cannot sue the other because in the eyes of the law they are one person. This is called interspousal immunity and the task force calls for legislation altering that doctrine as it concerns intentional interspousal torts. (A tort is damage, either to person or prop inflicted on a person by a through negligence or an intent act.)

The task force proposal would suits or damages resulting physical and mental injury inf by battery by a spouse — an personal tort. These injuries may r to hospital and doctor bills, lo work or job and increased child or housekeeping costs.

The unity doctrine of interspo immunity is embodied in the La Coverture, the common law of rape in England during the 17th, and 19th centuries. Its princi came over with settlers to Ame and crept into 20th century law.

This old law kept women from tering contracts for years, said attorney Sandra Watts. At one tim even gave husbands the right to m erately discipline their spouses. man could beat his wife with a no bigger around than his thumb, said, adding "thus comes the rul thumb."

But the law considered a woman separate from her mate in one gard. She was legally classified "inferior" to her husband and ing by his complexion," Watts add

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Spouse abuse can hurt the children, too

By SALLY SAUNDERS
Tribune Staff Writer

Five year-old Todd wasn't puzzled by the bruises and bandages on his mother's head nor by the cast on her wrist. He'd heard the argument, watched his stepfather beat her up. For that matter, he'd seen his own father do the same.

The day his mother came home from the hospital, he ran to her asking, "Mommy, why didn't you stay with my Daddy? He only gave you black eyes."

Questions like that gnaw away at battered women with children. The mothers wonder how their children are affected by a violent home life.

Final in a series

What scares them is the connection between a childhood spent in an abusive environment and spouse abuse. Almost always either the battered woman or the batterer has experienced or witnessed abuse as a child.

Will my son grow up to be a batterer or will he hate men? Will my daughter become a battered wife?

"My son makes cracks about men," said a local battered wife. "He's cynical. Yet for all the bad things he's seen, he's still a pretty good little guy, pretty compassionate."

Another pre-school boy felt guilty because he couldn't protect his mother. He's frightened of all men but most of all his stepfather, from whom his mother is now separated.

"He wakes up in the middle of the night with fright in his eyes," his mother related. "He keeps screaming that his stepfather is in the house...I could just die when it happens."

The boy is undergoing therapy and his outlook seems to be improving. As his mother said, "We've established a good verbal rapport. He's open and honest about what he feels and sees me as a person with feelings and problems.

"He comes to me when I'm down and says, 'Mom, don't cry, don't be sad.' And I tell him I'll work it out."

A local battered woman gave up custody of her son because she couldn't stop abusing him.

"I blamed him for everything," she admitted. "I'd tell myself if it weren't for him, my life would be better. His father abused me and I hated him. So I hated his son."

The boy is now thriving in a foster home and mother and son have a "loving relationship," she said.

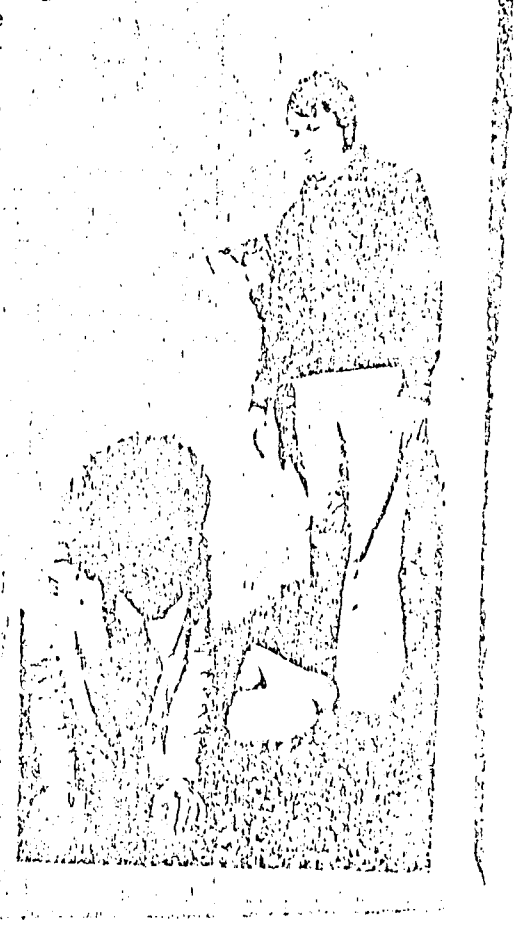
Still residing with her is a daughter from another marriage. "I've turned her into an independent person," the woman continued. "I abused her a couple times but nothing like my son. I loved her father even though he abused me. So I loved her and was more attentive to her from the start."

This mother thinks her problems are resolved.

Yet she well remembers the abusive environment that marked her childhood. She vowed never to allow a man to abuse her as her father abused her mother. To insure the pledge, she tried to dominate her husbands. That didn't work for her; she worries if her daughter may try something similar.

Besides her broken self-promise is a wealth of leftover bitterness. "I'm extremely bitter about my childhood, more so than about being a battered wife," she said. "All us kids were abused along with my mother."

Now this battered woman wonders which will be the greater in her own children's hearts — bitterness or forgiveness.



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Please sign & return to Secretary. Thank

SENATE Judiciary COMMITTEE

BILL _____ VISITORS' REGISTER DATE 2/16

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OP
Chris Van Tuyn	Mont. Wildlife Federation	409	✓	
F.H. Bates	Montana Chamber	409		✓
Joe Mierle	" "	409		✓
Jim Mitchell	Mt. Coalition of Home Owners	409	✓	
Jessica Hunter	Montana Environmental Information Center	409	✓	
Marjorie Simmons	" "	409	✓	
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Doyle Bales	" " "	409	✓	
Carey Boschetto	Mt Falls Mercy Home Shelterbelt	409	✓	
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[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
Susan Sill Stallcup	[illegible]	409	✓	
[illegible]	[illegible]	409		
[illegible]	Self	409	✓	
[illegible]	Self	409	✓	
Tim Hoyt	County Attorneys	482	✓	

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

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Please sign & return to Secretary! Judiciary

SENATE Judiciary COMMITTEE

BILL SB409 VISITORS' REGISTER DATE 2/16/99

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
Elizabeth Mantey	State Retired Teachers Assn & Women Voters	SB409	✓	
Arlene Brown	Montana YWCA, Retired Women's Action	SB409	✓	
Marti Adrian	Women's Place	SB409	✓	
Maureen A Hunt	YWCA President & U.S. Navy Nurse Corps Veteran	SB409	✓	
Michael Dahlem	Lobbyist, Student University of Montana	SB409	✓	
Mick Bower	Self	SB409	✓	
Janette Stivi	Helena Women's YWCA Board	SB409		
Penny Rasmussen	[illegible]	SB409	✓	
Jean E Dennison	[illegible]	SB409	✓	
Carol Mohler	Helena Women's Lobby	SB409	✓	
Juanita Fillmore	Women's Resource Center Board Member	SB409	✓	
Sharon Mallickan	Self	SB409	✓	
Jan Dahlstrom	AFT Montana Federation of Teachers	SB409	✓	
Diane Moore	Task force member for Social Services Improvement committee	SB 409	✓	
Tom Lawson and Sons	Property tax for the Poor Classes, Billings, Montana	SB409	✓	
Mel Hanneb	Private Practice Attorney counselling	409	✓	
Carole Brass	Helena Women's Political Caucus	409	✓	

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MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1979

The forty-second meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink at 9:36 a.m. in room 331 of the capitol building on the above date.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 476:

Joan Mayer from the Legislative Council offered amendments to this bill. Senator Towe moved that the bill be amended on page 11, line 7, by striking the words, "or accept". Senator Turnage suggested an amendment on line 15, page 11, by adding the following language "(2) refusal to take the examination may not be used in any manner whatsoever." Senator Towe moved the amendments offered by Joan Mayer including the extra ones be adopted. The motion carried unanimously.

Senator Turnage moved in Section 15, page 11, line 16, that Section 15 be reinserted. Section 15: "Admissibility of examination or test results and added further: "Providing the results of the examination or test shall not be admitted as evidence in the courts of Montana or in any administrative proceedings." The motion carried with Senator Van Valkenburg, Senator Towe and Senator Healy voting no.

Senator Towe moved that the bill as amended do pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 221:

Senator Towe moved the amendments offered by the Department of Revenue. The motion carried unanimously. Senator O'Hara moved amendment #1 of amendments offered by Joan Mayer. The motion carried unanimously. Senator Towe moved the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 228:

Joan Mayer from the Legislative Council offered some amendments, which in effect would incorporate Senate Bill 223 into this bill. Senator Turnage moved that the bill be amended on page 2, line 11, by striking "shall" and inserting "may". The motion carried unanimously.

Senator Towe moved thatthe bill as amended, do pass.

Senator Van Valkenburg moved to amend the bill on page 10, line 7, following the word "trial" insert "such trial must be held within a reasonable period of time." The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 395:

Senator Olson moved that this bill do pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 409:

This bill is an act to generally revise the law relating to assaults occuring between spouses, also known as the battered spouse act. According to law now, the divorce courts may be regulated to give awards, stated Senator Towe, and if, at the present time, they do not get a divorce, they are stuck.

Senator Van Valkenburg commented that there is some question as to whether an assault includes a battery.

Senator Van Valkenburg moved that this bill be amended on page 1, line 9, section 1, by inserting the material "There should be no interspousal immunity as to intentional torts". This motion was withdrawn and Senator Van Valkenburg moved that the wording offered by Joan Mayer be adopted. The motion carried.

Senator Turnage moved that this bill be amended on page 3, line 3 and 4 by striking all the new material and insert "unless enjoined by a court"; and strike sections 2 and 3 in their entirety. The motion carried unanimously.

Senator Van Valkenburg moved that the title and catch line be amended in section 1. The motion passed unanimously.

Senator Towe moved that on page 3, line 16, that the bill be amended by striking "whether" and on line 17, strike "separation or otherwise" and insert "order".

Senator Van Valkenburg commented that you are really forcing people to go out and get an attorney.

The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion carried unanimously.

Date 2/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

STANDING COMMITTEE REPORT

February 19, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 409

Respectfully report as follows: That Senate Bill No. 409,
introduced bill, be amended as follows:

1. Title, line 5.
Following: "ASSAULTS"
Insert: "AND INTENTIONAL TORTS"

2. Title, line 6.
Following: "SECTIONS"
Strike: "27-19-306,"
Following: "40-2-201"
Strike: ","

3. Page 1, line 10.
Following: "for"
Strike: "assault"
Insert: "intentional tort"

4. Page 1, line 11.
Strike: "for personal injury"

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 1, line 12.
Following: "intentional"
Strike: "assault on"
Insert: "tort against"

6. Page 1, line 15 through line 23 on page 2.
Strike: sections 2 and 3 in their entirety
Renumber: subsequent sections

7. Page 3, lines 3 and 4.
Following: "dwelling" on line 3
Strike: "except as provided by statute"
Insert: "unless enjoined by a court"

8. Page 3, line 16.
Strike: "whether"

9. Page 3, line 17.
Following: "a"
Strike: "decree of"
Following: "judicial"
Strike: "separation or otherwise"
Insert: "order"

And, as so amended,
DO PASS

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Chairman.

STATE PUB. CO.
Helena, Mont.

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OF MONTANA

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

46th Legislative Session
January 3, 1979 to April 20, 1979

ROBERT L. ANDERSON
THOMAS R. CONROY
AUBYN CURTISS
FRED DAILY
WILLIAM DAY
RALPH EUDAILY
POLLY HOLMES
DENNIS IVERSON
MICHAEL KEEDY
DANIEL KEMMIS
KERRY KEYSER
EARL LORY
ROBERT PAVLOVICH
JONAS ROSENTHAL
AUDREY ROTH
CARL SEIFERT
JACK UHDE
WES TEAGUE, Vice-chairman
JOHN P. SCULLY, Chairman

MARY ELLEN CONNELLY, Secretary
LARRY WEINBERG, Staff Attorney

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 301	revise - child abuse, neglect, etc.	2/27	Lensink	Monday /12	as amended be concurred	3/17
SB 348	provide for damages in wrongful death actions	2/27	VValkenburg	Friday /9	as amended not concurred	3/16
SB 386	disapprove supreme court's rules on judges	2/27	Blaylock	Tues. /13	as amended not concurred	3/14
SB 393	revise - laws relating to mentally ill, etc.	2/27	Towe	Monday /12	as amended be concurred	3/23
SB 409	revising - assaults occurring between spouses,	2/27	Regan	Monday /12	as amended be concurred	3/14
SB 476	license persons - lie detectors, forensic polygraphs, etc.	2/27	VValkenburg	Tues. /13	not concurred	3/14

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 12, 1979

The regular meeting was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Monday, March 12. All members were present except Representative Daily, absent and Representatives Roth and Anderson, who came in later.

Scheduled for hearing were Senate Bills 54, 393, 221, 491, 511, 283, 284, 301 and 409.

SENATE BILL NO. 409: Senator Regan. This bill revises the law relating to assault between spouses. I direct your attention to page 3, lines 17 and 18 concerning spouses living apart.

CAROL MITCHELL: Missoula Attorney. About a year and 1/2 ago there were contracts with the state to undertake a study on battered spouses. What we intended to do was to bring national research together with Montana research. The problem is pervasive. We are not talking about 1 out of 100, we are talking about 14 to 20% of married women. We have violence not in just one direction. Normally we define as a crime , the civil action It is currently happening across the country that we are abolishing that old common law doctrine.

SHARON McVICKER: Great Falls. She explained that she was there as a battered spouse and gave the details of herself being thrown through a window by her husband. When I called the police, because we were married they would take no action. I think it is very important for you to know that women and wives are people too, and that they should have the right to protect themselves. The cycle is always repeated, the husband feels guilty, the wife forgives him and then it happens again.

MATT BOWER: Attorney. I represented Mrs. McVickers, and I have her permission to speak. She has now a serious permanent injury. She has no cause of action under existing state law.

JESSICA HUNTER: Missoula. I want to talk about SB 243, which will be heard tomorrow, also. I was married for 34 years to a college professor who was an alcoholic. I was admitted to a hospital 17 times, so please vote to try and give us some protection. It happens in the best of families.

ANN OWENS: Helena. I am dealing with the rape aspect of this bill. I have been separated since last May and my husband came to where I work and I was stabbed 17 times, and then he raped me. Rape is an act of violence. It is wrong even if you are married to the man.

CAROL MITCHELL: Attorney. I think it is pretty obvious the section as amended is inadequate.

MARTHA ADRIAN: I would like to stress to you the critical nature of this. 1/3 of my clients come into my office and they disclose to me acts of violence by their husbands. I think one of the biggest things that we are dealing with is that people have to regain control over their lives. Before they had little recourse. I would like to stress within the bill sexual intercourse without consent. Currently you have to start the divorce proceedings before you have any protection. I would like also for the law to respect the decision that when a woman leaves she has withdrawn her consent for intercourse.

JEANE ADAMS: Mercy Home, Great Falls. She read statistics on the Mercy Home. We are working state-wide to take people out of crisis situations and give them time to work out their problems. Copies of letters were presented, exhibits #1 and #2.

CAROL MITCHELL: Senate Bill 243 is providing the temporary restraining order that we need. It is only when someone intentionally acts to hurt.

REPRESENTATIVE KEEDY: He asked about the amendment on page 3. I would like an explanation as to how that change was made.

CAROL MITCHELL: I was not there.

SENATOR LENSINK: We thought it opened up the law a little too far.

SENATOR TOWE: We were having trouble with the definition of separation.

CAROL MITCHELL: The prosecution will look very carefully at that.

There was no other discussion and the hearing closed on Senate Bill 409.

SENATE BILL NO. 301: Senator Lensink. This is another area of family violence. This adds some language to better protect the child. It is from child abuse that much of the criminal element comes. He gave some illustrations as to how it will shift emphasis, on page 2.

DR. JEFF STRICKLER: Governors Task Force and American Academy of Pediatrics, Helena. I would urge you to pass this bill. I look at child abuse as a common problem. The bill would help attorneys in their deliberations on the handling of such cases. The County Attorney has some amendments. Basically

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
Executive session
and Regular meeting combined.
March 14, 1979

The regular meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Scully in room 436 of the Captitol Building. Bills scheduled were SB 112, 132, 395, 481 and HJR 55. Representatives Uhde and Conroy were excused.

Because Senate Bills 112. 132 and 395 had been heard already in other House Committees they were merely reviewed by the Judiciary Committee.

While the committee waited for Senator Regan as sponsor of the Bill No. 481 Representative Scully suggested that some action be taken on bills still in committee.

SENATE BILL NO. 511; Representative Iverson moved "be concurred in". The motion carried with the vote unanimous. Representative Keedy will carry on the floor.

SENATE BILL NO. 409: Representative Keedy moved to amend by reinserting the original language, on lines 17 and 18, page 3. The motion carried with the vote unanimous. Representative Holmes moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Holmes will carry if Representative Dussault does not, since she is one of the sponsors.

HOUSE JOINT RESOLUTION 55: Representative Ramirez, as chief sponsor of the bill, went through it and explained it. He suggested that there should be a study committee.

MIKE ABLEY: Supreme Court. This bill is requesting assignment of an interim committee to evaluate Montana's Judiciarl district boundaries, number of judges and court support services. There is quite a disparity in travel expenses. We would like to take an in-depth look at this. He went on to explain a little further as to efficiency and manpower requirements.

MARGARET DAVIS: League of Women Voters. The League is in support of HJR 55 and endorse it totally. She gave the committee a copy of written testimony. (copy attached) We can not afford to authorize more judges. By undertaking a study we feel the legislature will be very much more capable of action on this. They will be more able to deal with it.

REPRESENTATIVE KEMMIS: Will this go to the next legislature.

REPRESENTATIVE RAMIREZ: Just the planning committee for the interim committee would set up a district court planning committee. The interim committee would not have any function other than the planning committee.

March 14, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 409, third reading copy, as follows:

1. Page 3, line 18.
Following: Line 17
Insert: "whether"
Following: "under a"
Strike: remainder of line 18
Insert: "decree of judicial separation or otherwise."

SENATE BILL NO. 409

INTRODUCED BY REGAN, LENSINK, DUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO ASSAULTS AND INTENTIONAL TORTS OCCURRING BETWEEN SPOUSES; AMENDING SECTIONS ~~27-19-306~~, 40-2-201, AND 45-5-506, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Right of person to sue spouse for ~~assault~~ INTENTIONAL TORT. A person has a cause of action against his spouse for damages ~~for personal injury~~ caused by the spouse's intentional ~~assault on~~ TORT AGAINST such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

~~NEW SECTION. Section 2. Action for injunction to prevent disruption of home by family member. A person may file a verified complaint in the district court showing that physical or emotional harm will result from the physical presence of a family member in the family home and requesting an injunction restraining such family member from molesting or disturbing the peace of the family home or excluding him therefrom. The court shall act on the complaint as in other actions for injunctions as provided in Title 27, chapter 19, as amended, including those provisions relating to temporary restraining orders.~~

~~Section 3. Section 27-19-306, MCA, is amended to read:~~

~~"27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge may require, except when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a party plaintiff or the complaint was filed pursuant to [section 2], a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction if the court finally decide that the plaintiff was not entitled thereto.~~

~~(2) Within 5 days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If the plaintiff fails to do so, such plaintiff is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."~~

Section 2. Section 40-2-201, MCA, is amended to read:

REFERENCE BILL

"40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling ~~except as provided by statute~~ UNLESS ENJOINED BY A COURT."

Section 3. Section 45-5-506, MCA, is amended to read:

"45-5-506. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart ~~whether~~ WHETHER under a ~~decree of judicial separation or otherwise~~ ORDER DECREE OF JUDICIAL SEPARATION OR OTHERWISE. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the

victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken."

-End-